

REMARKS/DISCUSSION:

This Response D is being filed within two months after the shortened statutory period for response that ended on July 19, 2007. Accordingly, a Petition for a Two-Month Extension of Time is made a part of the electronic filing transmission filed herewith.

By this Response D, claims 1, 4-9, 11-13, 15-20 and 22 remain pending in this application. Applicants acknowledge the Examiner's indication of allowable subject matter recited in claims 5, 7-9, 16 and 18-20.

Amendment and/or cancellation of claims is not to be construed as a dedication to the public of any of the subject matter of the claims previously presented. Further, Applicant(s) reserves the right to prosecute the subject matter of such claims in continuation and/or divisional applications.

Applicant has carefully studied the outstanding Office Action. This Amendment is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Rejection under 35 U.S.C. § 102(b)

Claims 1,4,6 and 11 stand rejected as being anticipated by U.S. Patent No. 5,242,385 to Strukel as noted in the Office Action. For example and regarding claim 1, the Examiner states that Strukel discloses a laminated ultrasonic end effector having a distal end and a proximal end and comprising at least two stamped pieces of sheet stock.

Applicant respectfully transverses the Examiner's rejection of Claims 1, 4, 6 and 11 over Strukel because, according to Applicant's understanding, the Strukel reference neither teaches nor suggests the elements of the Applicant's invention. It is Applicant's understanding that a claim is anticipated only if each and every

element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See for example MPEP 2131.

Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim, and the elements must be arranged as required by the claim. Under this standard, Applicant submits that Strukel fails to anticipate claims 1, 4, 6 and 11.

The Examiner's attention is first directed to the specification at page 6, first paragraph under Detailed Description. It states:

An ultrasonic surgical system typically includes an ultrasonic generator, a handpiece assembly, and an acoustic transmission assembly terminating in an end-connector. An electrical signal at a selected amplitude, frequency and phase drives one or more piezoelectric elements of the acoustic assembly, thereby converting the electrical energy into longitudinal waves of ultrasonic energy which propagate through an ultrasonic waveguide in the acoustic assembly in an acoustic standing wave to vibrate the acoustic assembly at a selected frequency and amplitude. The end-effector at the distal end of the acoustic assembly is placed in contact with tissue of the patient to transfer the ultrasonic energy to the tissue. (Emphasis added.)

The Examiner is then directed to Strukel, which discloses an ultrasonic handpiece 10 including a generally cylindrical housing 12, which further comprises a stack of laminations 20. Col. 2, lines 43-68 through Col. 3, lines 1-11. The handpiece also has an elongated hollow tip 40, which is vibrated and performs the actual emulsification of the material at the operating site (i.e. the end effector). Col. 3, lines 28-30. Strukel further discloses a tip 40, which is provided with the vibratory energy produced by the lamination stack 20 through a transition body 60. The transition body has a first section 62, which is adjacent

the end of the lamination stack 20. See Col. 3, lines 36-40 and Col. 4, lines 1-3. (Emphasis added).

Nowhere does Strukel disclose or suggest a laminated end effector (i.e. the tip) as is positively recited in independent claims 1 and 12. The Examiner is taking the laminated structure disclosed in conjunction with the handpiece (or transducer—See Abstract) and improperly applying the lamination structure to the end effector as recited in the claims. The handpiece (transducer) and the tip (end effector) are different structures within both the Strukel reference and the claimed invention. Accordingly, Strukel does not anticipate the claims and reconsideration is requested.

Rejection under 35 U.S.C. § 103

Claims 12, 13, 15, 17 and 22 stand rejected as being unpatentable over Strukel as noted in the Office Action. For the reasons stated above, Strukel does not make obvious the rejected claims and reconsideration is requested.

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Conclusion

Applicant submits that in view of the discussion, the rejection under 35 U.S.C. §§ 102 and 103 has been overcome and that the invention is now patentable over the cited prior. The Examiner is respectfully requested to reconsider all rejections and pass this case to issue.

Should any minor points remain prior to issuance of a Notice of Allowance, the Examiner is requested to telephone the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, which may be required to Account No. 10-0750/END0701/VEK.

Respectfully submitted,

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DATED: August 29, 2007